

REMARKS

Claims 1-11 are pending in the present application. Claim 1 has been amended. No new matter has been added by way of amendment. Applicants respectfully request consideration of the claims in view of the following remarks.

Detailed Action

A. Election/Restrictions

Applicants acknowledge that the Examiner has acknowledged Applicants' election of Group I, claims 1-10. Applicants acknowledge that claim 11 is withdrawn from further consideration by the Examiner.

B. Priority

The Examiner states that "[t]he status of the parent applications 09/658,835; 09/352,159; and 09/352,168 listed in page 1 of the specification, should be updated." *See* Office Action, p. 2. Applicants have amended the specification, updating the status of the parent applications. Applicants wish to thank the Examiner for this suggestion.

C. Specification

The Examiner objects to the disclosure at page 79, line 8 for "contain[ing] an embedded hyperlink directed to an Internet address." *See* Office Action, p. 2. Applicants have amended the specification, thereby alleviating this objection.

Rejections Under 35 U.S.C. § 112, First Paragraph

A. Enablement regarding Claims 1-10

Claims 1-10 stand rejected under 35 U.S.C. § 112, first paragraph, because the Examiner alleges that the specification, while being enabling for the isolated APAO polynucleotide encoding SEQ ID NO: 51 and host cells, plants and seed transformed with said polynucleotide, allegedly does not reasonably provide enablement for sequences having 90% identity to SEQ ID NO: 50 and encoding a functional polypeptide having APAO activity. *See* Office Action, pp. 3-4.

While not acceding to the Examiner's argument, in an effort to further prosecution Applicants have amended independent claim 1 to require at least 95% sequence identity to SEQ ID NO: 50.

In light of the above, Applicants submit that claims 1-10 are fully enabling and commensurate in scope with the disclosure of the claimed invention. Therefore, Applicants request that the rejections under 35 U.S.C. § 112 be withdrawn and reconsidered. Applicants respectfully submit that the claims are in form for allowance.

B. Written description regarding Claims 1-10

Claims 1-10 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The Examiner states that the specification describes polynucleotides from *Exophiala spinifera*, *Rhinocladiella atrovirens* or the bacteria of ATCC Accession No. 55552 isolates from maize seed and that the “scope of the claims encompasses genus of nucleic acids from all natural sources having 90% sequence identity.” The Examiner alleges that the specification does not “provide adequate written description for all the polynucleotides as broadly claimed.” See Office Action, pp. 4-5.

While not acceding to the Examiner's argument, in an effort to further prosecution Applicants have amended independent claim 1 to require at least 95% sequence identity to SEQ ID NO: 50.

Applicants submit that the claims of the present invention meet the written description requirement and, therefore, request that the rejections under 35 U.S.C. § 112 be withdrawn and reconsidered. Applicants respectfully submit that claims 1-10 are in form for allowance.

Summary

Applicants acknowledge that claims 1-10 are deemed free of the prior art.

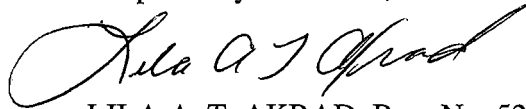
Conclusion

In conclusion, Applicants submit in light of the above amendments and remarks, the claims as amended are in a condition for allowance, and reconsideration is respectfully requested. If it is felt that it would aid in prosecution, the Examiner is invited to contact the undersigned at the number indicated to discuss any outstanding issues.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lila A. T. Akrad", written in a cursive style.

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